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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

LEGACY HEALTH; LEGACY GOOD  
SAMARITAN HOSPITAL AND MEDICAL  
CENTER; LEGACY MOUNT HOOD  
MEDICAL CENTER; LEGACY MERIDIAN  
PARK HOSPITAL dba LEGACY MERIDIAN  
PARK MEDICAL CENTER; and LEGACY  
EMANUEL HOSPITAL & HEALTH CENTER  
dba LEGACY EMANUEL MEDICAL  
CENTER,

**Case No. 3:22-cv-00573-HZ**

**PLAINTIFFS' NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Plaintiffs,

v.

STATE OF OREGON; OREGON BUREAU  
OF LABOR AND INDUSTRIES; VAL  
HOYLE, in her official capacity as  
Commissioner of the Oregon Bureau of Labor  
and Industries; and DUKE SHEPARD, in his  
official capacity as Deputy Commissioner of the  
Oregon Bureau of Labor and Industries,

Defendants.

Plaintiffs submit this Notice of Supplemental Authority in support of their Opposition to Defendants' Motion to Dismiss.

On October 20, 2022, in *Wakefield v. ViSalus, Inc.*, No. 21-35201, 2022 U.S. App. LEXIS 29228 (9th Cir. Oct. 20, 2022) (a copy of which is attached) the Ninth Circuit vacated the District Court for the District of Oregon's denial of defendant ViSalus's post-trial motion challenging the constitutionality of the statutory damages award. In a case of apparent first impression the Ninth Circuit held that in certain extreme circumstances a due process test applies to aggregated statutory damage awards even when the per violation award is constitutionally sound. Compensation and deterrence objectives can be overshadowed when damages are aggregated leading to awards that are largely punitive and untethered to the statute's purpose, and violate due process when the award is "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." Citing *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 67 (1919). The Ninth Circuit opinion also discusses guidance for determining whether a statutory damage award is disproportionately punitive in the aggregate. Factors to be considered include the amount of an award to each plaintiff, the total award, the nature and persistence of alleged violations, the extent of the defendant's culpability, damage awards in similar cases, the substance or technical nature of the violations, and the circumstances of each case.

The Ninth Circuit remanded for the district court to assess, guided by these factors, whether the aggregate award in the class action is so severe and oppressive that it violates due process.

DATED this 25<sup>th</sup> day of October, 2022.

BARRAN LIEBMAN LLP

*s/Richard C. Hunt*

By

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of October 2022, I served the foregoing **PLAINTIFFS'**

**NOTICE OF SUPPLEMENTAL AUTHORITY** on the following parties:

Brian Simmonds Marshall, Senior Assistant Attorney General  
Alex C. Jones, Assistant Attorney General  
Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Brian.S.Marshall@doj.state.or.us  
Alex.Jones@doj.state.or.us  
(Attorneys for Defendants)

by the following indicated method(s) set forth below:

- ☒ **Electronic Filing using the Court's ECF System**
- ☐ **Email**
- ☐ **Facsimile**
- ☐ **First-class mail, postage prepaid**
- ☐ **Hand-delivery**
- ☐ **Overnight courier, delivery prepaid**

*s/Richard C. Hunt*

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Richard C. Hunt

**CERTIFICATE OF SERVICE**